

September 24, 2020

Texas House Natural Resources Committee
Texas House of Representatives
P.O. Box 2910
Austin, TX 78768-2910

**RE: RESPONSE TO NOTICE OF FORMAL REQUEST FOR INFORMATION RELATED TO INTERIM
CHARGE NO. 2: REGIONAL PROJECTS TO MEET WATER SUPPLY NEEDS AND ENCOURAGE
PUBLIC AND PRIVATE INVESTMENT IN WATER INFRASTRUCTURE (HNR RFI 1)**

Dear Chairman Larson and Honorable Members of the Committee:

Poseidon Water LLC (Poseidon) is a leading U.S. water and wastewater project developer, investor and asset manager focused on public-private partnerships across North America. Headquartered in Carlsbad, CA, Poseidon is a portfolio company of Brookfield Infrastructure Partners L.P. (NYSE: BIP, TSX: BIP.UN) which is affiliated with and managed by Brookfield Asset Management Inc. ("Brookfield"; NYSE: BAM, TSX: BAM.A, Euronext: BAMA). Brookfield is one of the world's largest infrastructure investors with a 120-year history of owning and operating real assets across a global investment portfolio that includes more than 30 countries.

Brookfield has over \$22 billion dollars invested in the State of Texas with over 1,400 employees.

Poseidon is actively seeking additional investment opportunities in Texas and has been closely following the petition of the cities of Garland, Mesquite, Plano, and Richardson appealing the decision by North Texas Municipal Water District affecting wholesale water rates. Poseidon is interested in this case as it relates to the Public Utility Commission's ability to affect, modify, or nullify water contracts between third parties in the state of Texas. Had this case proceeded to a phase two cost of service determination to establish new water rates, this would have marked a significant policy shift as it would have rejected the established practice of giving deference to negotiated contract pricing and terms between sophisticated parties. Instead, this would have allowed the State to dictate new pricing and terms based on what it views as the appropriate cost of service without regard for the intent of the parties when the contract was implemented.

This potential policy shift was concerning because it would have fundamentally undermined the legitimacy of take-or-pay contracts – whether that contract is a wholesale water contract between public entities or a water purchase agreement between a public and private entity. Poseidon relies on these long-term take-or-pay contracts to support its project investments across the U.S. These contracts assure that the project's bondholders and shareholders will be paid; they dictate the risk allocation among the parties and ensure that the interests of each party are adequately protected; and they allow projects to achieve investment-grade credit ratings and access lower cost sources of capital.

Poseidon believes that this change would have affected all project investments (not just in water), as they would likely receive lower credit ratings and/or require larger reserve accounts, either of which would adversely impact the cost of the project. Additionally, equity investors in a project would be exposed to the risk that the underlying take-or-pay contract could be revised to their detriment at any time. No private investor is likely to commit large amounts of capital to a project supported by a take-or-pay contract that is subject to cancellation, invalidation, or other modification by a future city commission or other elected or appointed governing body.

As an investor looking to create innovative public-private partnerships in Texas that take advantage of the lowest cost sources of capital, Poseidon must be able to rely on contractual price guarantees. Without the contract deference that regional water suppliers have historically relied on, private investors cannot prudently provide capital for new water supply projects in Texas.



We strongly urge the Texas House Natural Resources Committee to consider legislative action that aims to accomplish the following goals related to upholding wholesale water contracts and incentivizing regional water projects and public-private partnerships in the state of Texas:

- 1.) Clarify in the Texas Water Code that regulatory agencies having purview over wholesale water and sewer rate appeals must give deference to the pricing, terms, and conditions established in all third-party contracts negotiated by sophisticated parties capable of determining just and reasonable rates, as well as to any court determinations related to such contracts;
- 2.) Allow private entities to directly borrow financing proceeds from the State Water Implementation Fund for Texas (SWIFT) as administered by the Texas Water Development Board (TWDB) for projects that are recommended water management strategies intended to create a public benefit and are sponsored by a political subdivision, such as through a water purchase agreement between the political subdivision and the private entity;
- 3.) Direct the TWDB to prioritize projects applying for SWIFT financing that include at least a 15% matching private capital investment, and issue SWIFT funds to such projects at a reduced interest rate;
- 4.) Require all projects applying to the TWDB for SWIFT financing to complete an evaluation of alternative project delivery and financing options, including public-private partnerships; and
- 5.) Require all projects applying to the TWDB for SWIFT financing to evaluate opportunities for regionalization to incentivize greater participation and more efficient water supply planning.

Poseidon appreciates this opportunity to respond to the Notice of Formal Request for Information issued by the Texas House Natural Resources Committee and thanks the Committee for its consideration and attentiveness to these important matters.

Sincerely,

Carlos Riva
Chief Executive Officer
Poseidon Water